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Officers' Benevolent Association and
Jersey City Police Superior Officers'
Association

JERSEY CITY POLICE
OFFICERS' BENEVOLENT
ASSOCIATION and JERSEY CITY
POLICE SUPERIOR OFFICERS'
ASSOCIATION,

Plaintiffs,
vs.
CITY OF JERSEY CITY and
MAYOR STEVEN FULOP in his
official capacity as Mayor
of the City of Jersey City,

Defendant.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY: LAW DIVISION

Docket No.:

Civil Action

**ACTION IN LIEU OF
PREROGATIVE WRIT**

VERIFIED COMPLAINT

Plaintiffs, JERSEY CITY POLICE OFFICERS' BENEVOLENT ASSOCIATION (hereinafter, "POBA") and JERSEY CITY POLICE SUPERIOR OFFICERS' ASSOCIATION (hereinafter, "PSOA"), (collectively, "Plaintiffs"), both with offices at 282 Central Avenue, Jersey City, New Jersey, by way of Complaint, against Defendant CITY OF JERSEY CITY ("Defendant City") and Defendant MAYOR STEVEN FULOP ("Defendant Fulop") (collectively "Defendants") say:

PARTIES

1. The POBA is a labor organization as defined by the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et. seq. The POBA is the exclusive negotiating representative of all Police Officers below the rank of Sergeant employed by Defendant City.

2. The PSOA is a labor organization as defined by the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et. seq. The PSOA is the exclusive negotiating representative for all Superior Officers in the ranks of Sergeant, Lieutenant, Captain and Inspector employed by Defendant City.

3. Defendant City with offices at 280 Grove Street, Jersey City, New Jersey, is a body politic operating under the mayor-council form of government pursuant to the Optional Municipal Charter Law, N.J.S.A. 40:69A-1, et. seq. (commonly called the Faulkner Act).

4. Defendant Fulop is the Mayor of Defendant City with offices at 280 Grove Street, Jersey City, New Jersey.

JURISDICTION AND VENUE

5. Plaintiffs bring this action in lieu of prerogative writ to compel Defendants to enforce and comply with Article XI, Section 3-85.1 of the City Code of Ordinances. This is

cognizable as an Action in Lieu of Prerogative Writ pursuant to R. 4:69-1, et seq.

6. Jurisdiction is proper in the Law Division as this action in lieu of prerogative writ involves action and inaction by Defendants in violation of local ordinance.

FACTS

7. Defendant City maintains an Off-Duty Employment program ("Program") for police officers represented by the POBA and the PSOA as well as crossing guards.

8. The Program is codified at Article XI, Section 3-85.1 of the City's Code of Ordinances. Attached hereto as Exhibit A is a true and correct copy of Article XI, Section 3-85.1 of the City's Code of Ordinances.

9. The ordinance authorizes private employers, including but not limited to utilities, construction companies, hospitals, malls, banks and schools to hire off-duty police officers and crossing guards to perform traffic and security services, at their expense.

10. The ordinance authorizes off-duty POBA negotiating unit members to accept off-duty employment from private employers.

11. The ordinance further provides that off-duty PSOA negotiating unit members may accept employment supervising off-

duty personnel. PSOA unit members are also paid by the private employers.

12. Although police officers and crossing guards are working for private employers, payment is made to the City for services rendered and the City pays the police officers and crossing guards pursuant to the Ordinance and, for police officers, in conformance with Attorney General Formal Opinion 1977 No. 23.

13. Defendant City's Public Safety Department, Office of Off-Duty Employment, manages the Program.

14. To hire off-duty police personnel pursuant to the Program, a prospective private employer must obtain "prior written approval of the Off-Duty Employment Intake Manager."

15. The Ordinance requires that "approval shall be granted if, in the opinion of the Off-Duty Intake Manager, under the authority of the Director of Public Safety, such employment is necessary and would not be inconsistent with the efficient functioning and good reputation of the Police Department and would not unreasonably endanger or threaten the safety of the off-duty personnel who are to perform the work."

16. As a result of the Program, approximately one hundred and fifty (150) additional police officers are deployed throughout Defendant City at any given time, at the expense of private employers and not the taxpayers of Defendant City.

17. Many private employers within Defendant City take advantage of the Program to employ off-duty police personnel for security.

18. These private employers include, but are not limited to PSE&G, the Newport Center Mall, Verizon, UBS and Goldman Sachs.

19. Many private employers seek off-duty police personnel for regular recurring work that has been approved over many years up to on or about January 10, 2019. For example, the Newport Mall, UBS and Goldman Sachs regularly hire off-duty police personnel for security.

20. On or about January 18, 2019, Defendant Fulop announced via Twitter that he was officially ending the Program for police officers "next week."

21. Upon information and belief, Crossing guards continue to be eligible for off-duty employment pursuant to the Program.

22. Prior to Defendant Fulop's January 18, 2019 Twitter post, on or about January 10, 2019, the Off-Duty Employment Intake Manager denied all requests by private employers for the use of police personnel pursuant to the Program despite the requirements of the ordinance.

23. Recurring work from private employers that was consistently approved in the past has been denied.

24. For example, the Newport Mall has requested off-duty police officers to provide security on Friday and Saturday nights for many years.

25. Prior to January 10, 2018, these requests have always been approved. However, beginning on or about January 10, 2019, all requests for off-duty police officers at the mall have been denied.

26. In denying these requests, the Off-Duty Employment Intake Manager has not complied with the requirements of the Ordinance. Rather, he advised the private employers that the Program has been terminated.

27. The off-duty employment previously worked by POBA and PSOA unit members is now worked by members of the New Jersey State Police and private, non-police personnel.

28. Upon information and belief, Defendant Fulop abolished the Program because several Jersey City police officers engaged in unlawful activity while assigned to off-duty employment pursuant to the Program.

29. Fifteen officers in total have either admitted to or are alleged to have been engaged in this illegal activity. This amounts to approximately 1.7% of the total number of police officers employed by Defendant City who are represented by the POBA and PSOA. Upon information and belief, this misconduct occurred prior to 2017.

30. Despite the misconduct of approximately 1.7% of the POBA and PSOA unit members employed by Defendant City, Defendants continued to approve off-duty employment under the Program.

31. POBA and PSOA unit members have been harmed by Defendant's refusal to comply with the Ordinances.

32. The harm suffered by POBA and PSOA members is irreparable. When an off-duty job is denied, the opportunity to work and be paid for the job has been lost forever.

COUNT

33. Plaintiffs incorporate paragraphs 1 through 32 of this Complaint as if fully set forth herein.

34. Pursuant to N.J.S.A. 40:69A-40, Defendant Fulop must enforce the charter and ordinances of Defendant City.

35. The Ordinance establishes the Program under which police personnel can work off-duty for private employers that request such services.

36. Article XI, Section 3-85.1(B) (2) of the Ordinance requires that prospective employers of off-duty police personnel receive approval for such employment provided that it is necessary, not inconsistent with the efficient function and good reputation of the Police Department and would not unreasonably endanger or threaten the safety of the off-duty personnel who are to perform the work.

37. Private employers who have routinely and regularly been approved to hire such off-duty police personnel have not received such approval as required by the Ordinance.

38. Rather, they have been told that the Program established by the Ordinance, which is still in effect, has been terminated.

39. Private employers have been hiring members of the New Jersey State Police and civilians and paying them for work that has been regularly, over the course of many years and in accordance with the Ordinance been performed and paid to Plaintiffs' unit members.

40. Defendant Fulop has failed to enforce the ordinances of Defendant City in violation of N.J.S.A. 40:69A-40.

41. As a result, the police officers represented by Plaintiffs have been irreparably harmed because the private employers cannot be compelled to remedy the damages they suffered by being denied outside employment.

WHEREFORE, Plaintiffs, seeks relief from this Court against Defendants, specifically:

1. Compelling Defendants to enforce the Ordinance, approve requests by private employers for off-duty police officers employed by Defendant City and allow Plaintiffs' unit members to work outside employment pursuant to the Program;

2. Enjoining Defendants from violating of the Ordinance establishing the Program;
3. Staying any attempt by Defendants to eliminate the Off-Duty Employment Program; and
4. Any other relief that the Court deems equitable and just.

VERIFICATION OF CARMINE DISBROW

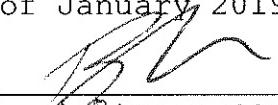
I, CARMINE DISBROW, am the President of PLAINTIFF, JERSEY CITY POLICE OFFICERS' BENEVOLENT ASSOCIATION. I have reviewed the allegations set forth in the Verified Complaint. On the basis of this review, I verify that the allegations set forth in the Verified Complaint are true and accurate. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



CARMINE DISBROW

Dated: January 24, 2019

Sworn and subscribed
Before me this 24th day
of January 2019



BRIAN J. MANETTA, ESQ.
ATTORNEY AT LAW
STATE OF NEW JERSEY

VERIFICATION OF ROBERT KEARNS

I, ROBERT KEARNS, am the President of PLAINTIFF, JERSEY CITY POLICE SUPERIOR OFFICERS' BENEVOLENT ASSOCIATION. I have reviewed the allegations set forth in the Verified Complaint. On the basis of this review, I verify that the allegations set forth in the Verified Complaint are true and accurate. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



ROBERT KEARNS

Dated: January 24, 2019

Sworn and subscribed
Before me this 24th day
of January 2019



BRIAN D. MANETTA, ESQ.
ATTORNEY AT LAW
STATE OF NEW JERSEY

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned hereby certifies, on information and belief, as follows:

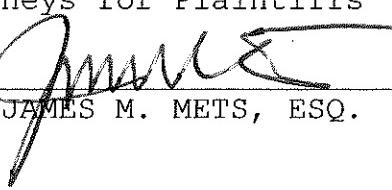
1. The matter in controversy is not the subject of any action pending in any court or of a pending arbitration proceeding between these parties.

2. No other action or arbitration proceeding is contemplated at this time by the parties to this action.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

METS SCHIRO & MCGOVERN, LLP

Attorneys for Plaintiffs

By: 

JAMES M. METS, ESQ.

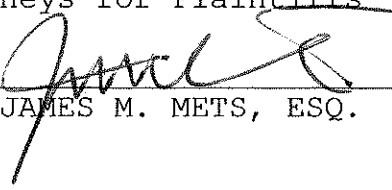
Dated: January 24, 2019

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, James M. Mets, Esq. is hereby designated as Trial Counsel in this matter.

METS SCHIRO & MCGOVERN, LLP

Attorneys for Plaintiffs

By: 

JAMES M. METS, ESQ.

Dated: January 24, 2019

EXHIBIT A

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- (7) Regularly review the ordinances of the City of Jersey City dealing with public safety.

SUB-ARTICLE I**Division of Police**

§ 3-85. Creation of the Division of Police; Police Chief in charge. [Added 9-11-2013 by Ord. No. 13-081]

There shall be a Division of Police, the head of which shall be the Chief of Police.

- A. Pursuant to N.J.S.A. 40:69A-60.7, the Mayor may appoint a Chief of Police who shall have served as a superior police officer and possess at least five years' administrative and supervisory police experience.
- B. Under the direction of the Director of Public Safety, the Chief of Police shall:
 - (1) Administer and enforce rules and regulations and special emergency directives for the disposition and discipline of the force and its officers and personnel.
 - (2) Have, exercise, and discharge the functions, powers and duties of the division.
 - (3) Prescribe the duties and assignments of all subordinates and other personnel.
 - (4) Delegate such authority as necessary for the efficient operation of the division.
 - (5) Report at least monthly to the Director of Public Safety in such form as shall be prescribed by the Director on the operation of the division during the preceding month, and make such other reports as may be requested.

§ 3-85.1 Off-duty employment.* [Amended 1-26-2011 by Ord. No. 11-011; 9-11-2013 by Ord. No. 13-081; 12-18-2013 by Ord. No. 13-141]

- A. Definitions. As used in this section, the following terms shall have the following meanings unless the context clearly indicates otherwise:
 - (1) "Alcohol Beverage Control premise" means one which is licensed by the Alcohol Beverage Control Board.
 - (2) "Director of Public Safety" means the Director of Public Safety or his or her designee.
 - (3) "City Owned Facility" means any property owned by the City of Jersey City rented by individuals or entities for the purpose of a privately held function.
 - (4) "Large Commercial Establishment" means a commercial establishment such as a store, bank or financial institution of four thousand (4,000) square feet or more or one (1) which is part of a franchise, chain or multi-store complex.

*Note—Please see Traffic Barricade Manual, page 30, on file in the Office of the City Clerk and the Division of Engineering, Traffic and Transportation.

(5) "Construction Sites":

(a) "City Projects" means any construction project performed by a vendor pursuant to a contract with the City of Jersey City for a public project in City-owned or leased buildings or on City-owned or leased properties.

(b) "Private Contractor Projects" means:

(i) Any construction project other than a City Project as defined above; and

(ii) Construction projects for an owner occupied class 2 residential property (one (1) to four (4) units).

(6) "Employer" or "prospective employer" means a prospective employer of off-duty officers.

(7) "Event requiring major or unusual crowd control" means:

(a) An event where five thousand (5,000) people or more expected to attend, such as an athletic event; and

(b) Any event where alcohol will be served; and

(c) Any event which in the opinion of the Director Public Safety will produce an unusual amount of vehicular or pedestrian traffic.

(8) "Film Production Sites" include, but are not limited to, movie sets, television productions, and photography.

(9) "Holidays" are defined only as New Years Eve, New Years Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day following Thanksgiving Day, Christmas Eve and Christmas Day, and only those dates officially observed.

(10) "Person" means any individual, corporation, partnership or organization unless the context clearly indicates otherwise.

(11) "Superior Officer" means Sergeant, Lieutenant, or Captain.

(12) "Tax Exempt Organization" means a non-profit organization as defined by state or federal law.

(13) "Crossing Guards" means City personnel who regulate and direct the movement of pedestrians through traffic.

(14) "Off-Duty Personnel" shall mean Police Officers and Guards if applicable, Crossing Guards.

(15) "Office of Off-Duty Employment" means the office responsible for coordinating off-duty assignments and billing of off-duty police work.

(16) "Off-Duty Employment Intake Manager" means the civilian employee of the Public Safety Department who manages off-duty personnel requests and coordinates the number of off-duty personnel assigned to each work site, the Off-Duty Employment Intake Management reports to the Director of Public Safety.

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- (17) "Off-Duty Billing Coordinator" means the civilian employee of the Public Safety Department who administers the Off-Duty Trust Account. The Off-Duty Billing Coordinator reports to the Off-Duty Intake Manager and submits a report on the Off-Duty Trust Account to the Director of Public Safety and the Fiscal Officer every ninety (90) days.
- B. Purpose. For the convenience of those persons who utilize the services of off-duty personnel of the Jersey City Police Department, and to authorize the outside employment of Police Officers and Crossing Guards while off-duty, the City of Jersey City hereby establishes this policy. With regard to Police Officers only, this policy complies with Attorney General Formal Opinion 1977-No. 23. In limited situations involving pedestrian safety, Crossing Guards may be substituted for Police Officers at the discretion of the Off-Duty Employment Intake Manager.
- (1) Off-duty personnel, at their option, shall be permitted to accept employment from private employers, who are separate and independent from the City of Jersey City, only during off-duty hours and at such time as will not interfere with the efficient performance of regularly scheduled or emergency duty of the City; provided, however, that no off-duty personnel may work within a premises licensed by the Alcohol Beverage Board, including, but not limited to, bars, taverns, nightclubs that serve alcoholic beverages, liquor stores, or restaurants with liquor licenses. Off-duty personnel are not permitted on the "licensed premise" itself, which is the area licensed for alcohol consumption, retail sale or storage; provided further that no off-duty personnel may accept off-duty employment under this ordinance by any governmental agency of the City of Jersey City other than the Jersey City Housing Authority.
 - (2) Prospective employers of off-duty personnel shall: 1) obtain the prior written approval of the Off-Duty Employment Intake Manager, which approval shall be granted if, in the opinion of the Off-Duty Employment Intake Manager, under the authority of the Director of Public Safety, such employment is necessary and would not be inconsistent with the efficient functioning and good reputation of the Police Department and would not unreasonably endanger or threaten the safety of the off-duty personnel who are to perform the work.
 - (3) Upon approval by the Off-Duty Employment Intake Manager, the amount estimated to pay for the off-duty employment shall be deposited in the trust account established under subsection C.
 - (4) No off-duty personnel shall be paid directly by any employer for requested services, nor provide services for more hours than specified in the request for services.
 - (5) The Director of Public Safety is empowered to promulgate regulations and policies to effectuate this section.

C. Trust account established. [Amended 9-10-2014 by Ord. No. 14-092]

- (1) To assure the timely payment of wages to off-duty personnel who perform off-duty work, and to meet the requirements of the Fair Labor Standards Act, the City of Jersey City has established a trust account known as the "Off-Duty Employment Trust Account." This trust account is dedicated for the receipt of fees collected for the payment for off-duty employment. The "Off-Duty Employment Trust Account" shall be administered by the Off-Duty Billing Coordinator who shall make a written report to the Director of Public Safety and the Fiscal Officer every

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ninety (90) days regarding said account. Payments to off-duty personnel shall be on a biweekly basis with all appropriate deductions. All payments must be remitted directly to the City of Jersey City for said account. Deposits shall be in the form of certified check, bank check, money order, business check, credit card or electronic payment at the discretion of the Fiscal Officer.

(2) Hour estimate:

- (a) Hours Known: A prospective employer of off-duty personnel shall estimate the number of hours and days required. The estimate shall be approved in writing by the Off-Duty Employment Intake Manager and an amount sufficient to cover the rates of compensation and administrative fees set forth in subsection D for the total estimated hours of service shall be deposited into the Trust Account.
- (b) Hours Unknown or In Excess of Ten (10) Days: In any instance where the number of hours cannot be reasonably estimated or is anticipated to be in excess of ten (10) days, a prospective employer shall deposit an amount sufficient to cover the rate of compensation and administrative fees set forth in subsection D for the equivalent of ten (10) days prior to the commencement of any services. Any unused portion of the deposit shall be returned or credited against the final amount owed.
- (3) Before posting any request for services of off-duty personnel, the Off-Duty Employment Intake Manager shall verify that the balance in the trust account of the prospective employer is sufficient to cover the compensation and fees for the number of hours specified in the request. The Off-Duty Employment Intake Manager shall not post a request for services unless all fees and compensation required in the manner described above have been deposited in the trust account.
- (4) Depletion of Funds in a Trust Account for any Individual Person or Entity: In the event the funds in any individual or entity's trust account should become depleted, services of off-duty personnel shall cease, and requests for further or future services shall not be posted until additional funds have been deposited in the trust account in the manner prescribed above. In the event of an unforeseen emergency situation that would require off-duty personnel to remain beyond the time for which funds have been posted, the Off-Duty Employment Intake Manager may waive the requirement for posting additional funds after the first ten (10) hours for any employer exhibiting a previous satisfactory payment history. However, payment for the additional hours shall be made within forty-eight (48) hours.
- (5) A prospective employer shall be responsible for ensuring that sufficient funds remain in the trust account in order to avoid any interruption of services. In the event of a project which requires services over an extended period the Off-Duty Billing Coordinator may require advance payment equal to twenty-five (25) percent of the projected extended time period with additional twenty-five (25) percent advances as a project continues.
- (6) Exemption. Public utility companies under the jurisdiction of, and regulated by, the New Jersey Board of Public Utilities and the Jersey City Housing Authority are exempt from the provisions set forth in this section requiring advance payment to the trust account; providing, however, that

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there are no amounts previously due that are outstanding for a period in excess of fifteen (15) days. Any such delinquent balances shall require advance payment of the amount outstanding prior to any off-duty personnel engaging in any further off-duty assignments.

D. Requests for services. [Amended 11-24-2015 by Ord. No. 15-152]

- (1) Requests for the services of off-duty personnel for a period of one week or longer shall be forwarded to the Off-Duty Employment Intake Manager at least ten (10) days before such services are required. The Off-Duty Employment Intake Manager will compile a list of available Police Officers and/or Crossing Guards to perform the requested services.
- (2) Requests for the services of off-duty personnel for a period of less than one (1) week shall be forwarded to the Off-Duty Employment Intake Manager as soon as practicable, but in no event less than twenty-four (24) hours before such services are required, except in emergency situations.
- (3) In emergency situations, requests for services shall be made, as necessary, to the Off-Duty Employment Intake Manager who shall make every effort to accommodate such request in a reasonable manner in his or her discretion. If the emergency is imminent, the Director of Public Safety shall also have the ability to deploy off-duty personnel on an emergent basis. Any off-duty personnel, when so employed by private employers shall be compensated at the rates set forth in subsection D, hereafter. All payments in emergency situations shall be made within forty-eight (48) hours. Completed claim forms are to be provided to the Police Officer at the time the services are rendered and the Police Officer shall deliver same to the Off-Duty Employment Intake Manager.
- (4) In the event an Off-Duty Police Officer or Crossing Guard is unavailable to perform an assignment, the Off-Duty Employment Intake Manager will notify the next available Police Officer(s) or Crossing Guard(s) on the off-duty assignment list of the availability of the assignment until the assignment is filled. A Police Officer need not accept an off-duty assignment that does not guarantee a minimum of four (4) hours of off-duty employment. However, a Police Officer, at his or her discretion, may accept an off-duty assignment that provides less than four (4) hours of off-duty employment.
- (5) Off-duty supervisors will be assigned to supervise the deployed off-duty officers in accordance with the policy established by the Public Safety Director after ensuring sufficient funds are available. An off-duty superior officer's command is not limited to any one (1) specific project. The supervisor will be responsible for all off-duty police officers designated to his or her command irrespective of where those off-duty personnel are assigned. The cost of the off-duty supervisor shall come from the administrative fees paid by the employers.
- (6) In special circumstances the Off-Duty Employment Intake Manager, may, in consultation with the Director of Public Safety, assign a supervisor to oversee a specific off-duty assignment if the Off-Duty Employment Intake Manager believes it is necessary to ensure the health, safety and welfare of the public.

E. Rates of compensation; administrative fees; payment for services.

- (1) Rates of compensation for the services of off-duty personnel are established as follows:

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COMPENSATION FOR POLICE OFFICERS

| Construction Sites | Commercial Establishments | Tax Exempt Org |
|---|---|----------------|
| CITY PROJECTS \$35.00/hour SAT TIME & A HALF SUN-HOLIDAYS DOUBLE TIME AFTER 4 PM - Additional \$10.00/hour | Banks or Financial Institutions \$40.00/hour Other Commercial Establishments: OVER 4,000 SQ FT. \$40.00/hour | \$35.00/hour |
| PRIVATE CONTRACTORS As Defined in A5(b)(i) SAT TIME & A HALF SUN-HOLIDAYS DOUBLE TIME AFTER 4 PM - Additional \$10.00/hour \$50.00/hour | Other Commercial Establishments UNDER 4,000 SQ Ft. \$25.00 | |
| PRIVATE CONTRACTORS As Defined in A5(b)(ii) \$35.00/hour | | |

| Large Events Under 5,000 People | Large Events Over 5,000 People | Film Production Sites |
|--|--------------------------------|-------------------------------------|
| (Except City-Owned Facility Events) \$50.00/Hour With alcohol present \$55.00/hour | \$65.00 | \$55.00/Hour |
| Outside an Alcoholic Beverage Control Licensed Premise \$55.00/Hour | | City Owned Facility \$55.00/hour |

Compensation for Crossing Guards: For pedestrian safety \$10.00/hour.

- * Employers are not charged directly for Superior Officers assigned pursuant to this ordinance, or any regulations or directives promulgated in furtherance of this ordinance. Superior Officers will receive compensation directly from the City at a rate of \$10.00 per hour higher than the highest paid off-duty Police Officer under his or her immediate supervision in a given off-duty assignment.

UNLESS STATED IN THE ABOVE TABLE, NO NIGHT, WEEKEND OR HOLIDAY DIFFERENTIAL

- (2) Any off-duty assignments over eight (8) hours shall be paid at a time and a half rate beginning with the ninth hour.
- (3) Fee for police vehicle and fuel per hour or part thereof: \$10.00. The necessity for a police vehicle at a particular site will be at the determination of the Off-Duty Employment Intake Manager.

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- F. Administrative Costs.** An additional fee of \$12.00 per Police Officer/Crossing Guard per hour is hereby established to cover administrative costs, overhead and out-of-pocket expenses of the City. This additional fee shall not be charged to a nonprofit organization for an event in a City-owned building nor to the Jersey City Housing Authority. The aforesaid rates shall be reviewed every three (3) years commencing January 1, 2014. [Amended 11-24-2015 by Ord. No. 15-152]

The Off-Duty Employment Intake Manager or the Director of Public Safety may adjust or waive the administrative fees in cases in which the fee here described would result in undue hardship, be prohibitive or would otherwise undermine the interest of public safety.

- G. Cancellation.** If a prospective employer fails to notify the Off-Duty Employment Intake Manager at least twelve (12) hours before the commencement of services that those services are no longer needed, and the off-duty Police Officer(s) or Crossing Guard(s) arrive for the assignment, the prospective employer shall compensate the Police Officer(s) or Crossing Guards for four (4) hours, and those off-duty Police Officer(s) or Crossing Guard(s) will be moved to another off-duty job, if available.
- H. Public Emergency.** The Director of Public Safety, Chief of Police, or ranking Chief of Patrol shall have the authority to order any off-duty personnel engaged in off-duty assignments to respond to an emergency. The Director of Public Safety may terminate an assignment whenever said assignment creates an unacceptable risk to the off-duty Police Officer or Crossing Guard or to the citizens of the City. If an off-duty assignment is cancelled or terminated by the Director of Public Safety, the employer shall not be responsible for any compensation or fees until the Police Officer or Crossing Guard returns to the assignment.

§ 3-86. Solicitations restricted. [Added 9-11-2013 by Ord. No. 13-081]

No member of the Department of Public Safety, Division of Police shall solicit or accept anything of value as consideration for or in connection with the discharge of his or her official duties. No such member shall solicit the sale of tickets in connection with any fund-raising campaign or request contributions directly or indirectly for the same or solicit anything of value for the benefit of himself or herself or other members of the Department of Public Safety, Division of Police or any other group or organization without written permission of the Director.

§ 3-87. Special law enforcement officers. [Added 9-11-2013 by Ord. No. 13-081]

- A.** The Director of Public Safety shall have the power to appoint special law-enforcement officers in accordance with the provisions of the Special Law Enforcement Officers Act, N.J.S.A. 40A:14-146.8 et seq. The compensation of such officers shall be determined by Executive Order of the Mayor of the City of Jersey City.

§ 3-87.1. Registry of private outdoor video surveillance cameras. [Added 6-29-2016 by Ord. No. 16-102]

- A. Purpose.** Pursuant to N.J.S.A. 40:48-1 and 40:48-1.6 et seq., the City has established a voluntary registry of private outdoor video surveillance cameras under the direction of the Jersey City Police. The purpose is to aid local law enforcement in investigating criminal activity that occurred within the vicinity of the camera's location in a timely, efficient and effective manner.

JERSEY CITY POLICE
OFFICERS' BENEVOLENT
ASSOCIATION and JERSEY CITY
POLICE SUPERIOR OFFICERS'
ASSOCIATION,

Plaintiffs,

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CITY OF JERSEY CITY and
MAYOR STEVEN FULOP in his
official capacity as Mayor
of the City of Jersey City,

Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY:LAW DIVISION

Docket No.:

Civil Action

**BRIEF IN SUPPORT OF PLAINTIFFS, JERSEY CITY POLICE OFFICERS
BENEVOLENT ASSOCIATION AND JERSEY CITY POLICE SUPERIOR OFFICERS
ASSOCIATION'S APPLICATION FOR INJUNCTIVE RELIEF**

*JAMES M. METS, ESQ. [No. 028971990]
Of counsel and on the Brief*

*Brian J. Manetta, Esq. [No. 042132006]
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Officers' Association

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PRELIMINARY STATEMENT

Plaintiffs, Jersey City Police Officers' Benevolent Association (hereinafter, "POBA") and Jersey City Police Superior Officers' Association ("PSOA") (collectively, "Plaintiffs") seek an order compelling Defendant City of Jersey City ("Defendant City") and Defendant Mayor Steven Fulop ("Defendant Mayor") (collectively, "Defendants") to comply with Article XI, Section 3-85.1 of the City's Code of Ordinances and enjoining Defendants from violating that Ordinance. Plaintiffs seek interim relief as irreparable harm will occur to their constituent members if the requested relief is not granted.

Defendant City maintains an Off-Duty Employment program ("Program") for police officers represented by Plaintiffs as well as crossing guards. (Verified Complaint, ¶7, Exh. A). Pursuant to the Program, private employers are authorized to hire off-duty police officers and crossing guards to provide traffic and security services. (Verified Complaint, ¶9). Private employers, not the taxpayers of Jersey City, pay for these services. (Verified Complaint, ¶9). The Program is codified at Article XI, Section 3-85.1 of the City's Code of Ordinances. (Verified Complaint, ¶8, Exh. A). Pursuant to the Ordinance, a private employer's request for off-duty police services must be approved, provided that such employment is necessary, is not inconsistent with the efficient functioning and good reputation of the police department and would

not unreasonably endanger or threaten the safety of the off-duty personnel who are to perform the work. Id. (Verified Complaint, ¶15, Exh. A).

On January 18, 2019, Defendant Fulop announced via twitter that he was officially ending the Program for police officers "next week." (Verified Complaint, ¶20). Even Before Defendant Fulop's Twitter post, beginning on or about January 10, 2019, all requests by private employers for use of off-duty police personnel were denied outright. (Verified Complaint, ¶22). These requests have been denied despite the requirements that they must be approved so long as they meet the requirements for approval. Id. Pursuant to the Ordinance, these requests should not have been denied as many are recurring requests for work that has been approved in the past. (Verified Complaint, ¶23).

Plaintiffs' seek interim relief compelling Defendant Mayor to comply with Article XI, Section 3-85.1 and prohibit him from violating the Ordinance. As set forth more fully below, Plaintiffs' constituent members will suffer irreparable harm if the requested relief is not granted. Plaintiffs have a reasonable likelihood of success on the merits of its claim, and the equities favor Plaintiffs in this matter. Accordingly, the Court must provide the requested relief.

STATEMENT OF FACTS

Plaintiff POBA is a labor organization representing all police officers below the rank of Sergeant employed by Defendant City. (Verified Complaint, ¶1). Plaintiff PSOA is a labor organization representing all superior police officers in the ranks of Sergeant, Lieutenant, Captain and Inspector, employed by Defendant City. (Verified Complaint, ¶2).

Defendant City maintains an Off-Duty Employment Program ("Program") for police officers represented by the POBA and PSOA, as well as crossing guards. (Verified Complaint, ¶7). The Program is managed by the City's Public Safety Department, Office of Off-Duty Employment. (Verified Complaint, ¶13).

The Program is codified at Article XI, Section 3-85.1 of the City's Code of Ordinances. (Verified Complaint, ¶8, Exh. A). The Ordinance authorizes private employers, such as utilities, construction companies, hospitals, malls, banks and schools to hire off-duty police officers and crossing guards to perform traffic and security services, at their expense. (Verified Complaint, ¶9).

The Ordinance authorizes POBA unit members to accept off-duty employment from requesting employers. (Verified Complaint, ¶10). PSOA unit members may accept employment supervising off-duty personnel. (Verified Complaint, ¶11). Although police officers and crossing guards are working for private employers, payment is

made to the City for services rendered and the City pays police officers and crossing guards pursuant to the Ordinance. (Verified Complaint, ¶12).

Pursuant to the Ordinance, a prospective private employer must obtain "prior written approval of the Off-Duty Employment Intake Manager." (Verified Complaint, ¶14, Exh. A). The ordinance requires that "approval shall be granted if, in the opinion of the Off-Duty Intake Manager, under the authority of the Director of Public Safety, such employment is necessary and would not be inconsistent with the efficient functioning and good reputation of the Police Department and would not unreasonably endanger or threaten the safety of the off-duty personnel who are to perform the work." (Verified Complaint, ¶15, Exh. A).

As a result of the Program, approximately one-hundred and fifty (150) additional police officers are deployed throughout Defendant City at any given time, at the expense of private employers and not the taxpayers of Defendant City. (Verified Complaint, ¶16).

Many private employers within Defendant City take advantage of the Program to employ off-duty police personnel for security. (Verified Complaint, ¶17). These employers include, but are not limited to, PSE&G, Verizon, Newport Center Mall, UBS and Goldman Sachs. (Verified Complaint, ¶19). Many of these private employers seek off-duty police officers for regular recurring work that has

been approved over many years until on or about January 10, 2019. (Verified Complaint, ¶19). For example, the Newport Center Mall, UBS and Goldman Sachs regularly hire off-duty police personnel for security. Id.

On or about January 18, 2019, Defendant Fulop announced his intention to end the Program for police officers "next week." (Verified Complaint, ¶20). Defendant Fulop made this announcement via Twitter. Id. Prior to Defendant Fulop's January 18, 2019 Twitter post, on or about January 10, 2019, the Off-Duty Employment Intake Manager denied all requests by private employers for the use of off-duty police personnel pursuant to the Program despite the requirements of the Ordinance. (Verified Complaint, ¶22). Recurring work from private employers that has been consistently approved in the past was denied. (Verified Complaint, ¶23).

From his Twitter post, it appears that Defendant Fulop abolished the Program because several Jersey City police officers engaged in unlawful activity while assigned to off-duty employment pursuant to the Program. (Verified Complaint, ¶28). However, only fifteen in total have either admitted to or are alleged to have engaged in this illegal activity, which occurred prior to 2017. (Verified Complaint, ¶29). This amounts to approximately 1.7% of the total number of police officers employed by Defendant City who are represented by the POBA and PSOA. Id.

The off-duty employment previously worked by POBA and PSOA unit members is now worked by members of the New Jersey State Police and private, non-police personnel. (Verified Complaint, ¶27).

As a result of Defendants' refusal to comply with Article XI, Section 3.85.1, Plaintiff's constituent members are irreparably harmed. (Verified Complaint, ¶¶31-32). When an off-duty job is denied, the opportunity to work the job is lost forever. Id. There is no available remedy. As set forth more fully below, this Court must grant the requested relief.

LEGAL ARGUMENT

**PLAINTIFFS ARE ENTITLED TO INTERIM RELIEF
BECAUSE THEY HAVE A REASONABLE PROBABILITY OF
SUCCESS ON THE MERITS AND IRREPARABLE HARM
WILL OCCUR IF THE REQUESTED RELIEF IS NOT
GRANTED.**

Plaintiffs must be granted interim relief. Here, Defendant City's Council enacted an ordinance authorizing private employers to hire off-duty police officers to provide traffic control and security. (Verified Complaint, ¶7, Exh. A). Defendant Mayor, by fiat, abolished that ordinance for police officers represented by the POBA and PSOA. The Mayor does not have the legal authority to abrogate the legislative process and usurp the power of the Council in such a fashion. Accordingly, this Court must enjoin Defendant

Mayor's action and compel the enforcement of Article XI, Section 3-85.1 of the City's Code of Ordinances.

To obtain interim relief, the moving party must demonstrate a reasonable probability of success on the merits; that a balancing of the equities and hardships favors injunctive relief; that the movant has no adequate remedy at law and that irreparable injury to be suffered in the absence of injunctive relief is substantial and imminent; and that the public interest will not be harmed.

Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982), Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971), Waste Management of New Jersey, Inc., v. Union County Util.'s Auth, 399 N.J. Super. 508, 519-20 (App. Div. 2008). A claim for interim relief designed to preserve the status quo need not meet the heightened standard designed for other forms of interim relief. Waste Management of New Jersey, Inc., v. Union County Util.'s Auth, 399 N.J. Super. 508 (App. Div. 2008).

Plaintiffs are entitled to interim relief. As set forth more fully below, Plaintiffs have a reasonable likelihood of success on the merits of their claim, their members will be irreparably harmed and suffer severe hardship if interim relief is not granted. The public interest will not be harmed if interim relief is granted.

A. PLAINTIFFS HAVE A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR CLAIM.

The Off-Duty Employment Program was enacted through an Ordinance passed by Defendant City's Council. By abolishing the Program, Defendant Mayor has unilaterally repealed Article XI, Section 3-85.1 of the City's Code of Ordinances. Defendant Mayor does not have such unfettered power. Such action is a broad overreach of the power granted to him by the Optional Municipal Charter Law, N.J.S.A. 40:69-1, et. seq. (the Faulkner Act). Accordingly, this Court must grant interim relief in this matter.

The Faulkner Act clearly sets forth the separation of powers between the legislative branch of local government and the executive branch. Pursuant to N.J.S.A. 40:69A-36 "the legislative power of the municipality shall be exercised by the municipal council...Legislative powers shall be exercised by ordinance..." The mayor, on the other hand, is statutorily required to "enforce the charter and ordinances of the municipality and all general laws applicable thereto." N.J.S.A. 40:69A-40 (2019). "Stated generally, then, the mayor-council plan under the Faulkner Act vests in the mayor the responsibility for administrative and executive operations of the municipality, while reposing the ultimate legislative and concomitant investigative responsibilities in the council." Municipal Council of the City of Newark v. James, 183 N.J. 361, 367 (2005).

It is well-settled that the body holding the power to enact an ordinance is the body with the power to amend or repeal it. Isola v. Borough of Belmar, 34 N.J. Super. 544, 549 (1955), citing Stemmler v. Borough of Madison, 82 N.J.L. 596, 598-99 (1912). Thus, the right to amend or repeal ordinances rests exclusively with the council in a municipality operating under the mayor-council form of government pursuant to the Faulkner Act. The mayor's role is to enforce those duly passed ordinances. N.J.S.A. 40:69A-40 (2019).

Here, the City Council exercised its power to enact ordinances when it passed Article XI, Section 3-85.1 of the City's Code of Ordinances. The Ordinance establishes an Off-Duty Employment Program. (Verified Complaint, ¶8, Exh. A). The Program permits private employers to hire off-duty police personnel to perform traffic and security services. (Verified Complaint, ¶9, Exh. A). The Ordinance also provides the procedure for hiring these off-duty police officers. Id. Private employers must obtain the prior written approval of the Off-Duty Employment Intake Manager. Id.

The Ordinance requires that a request by a private employer be granted provided that certain conditions are met. Section 3-85(B)(2) states: "...approval shall be granted if, in the opinion of the Off-Duty Employment Intake Manager, under the authority of the Director of Public Safety, such employment is necessary and would not be inconsistent with the efficient functioning and good

reputation of the Police Department and would not unreasonably endanger or threaten the safety of off-duty personnel who are to perform the work." Id. (emphasis added).

Here, Defendant Mayor has unilaterally ended the Program for police officers. This action impermissibly usurps the power of the Council to enact, amend and repeal legislation. Defendant Mayor has also abrogated his statutorily mandated duty to "enforce the charter and ordinances of the municipality..." pursuant to N.J.S.A. 40:69A-40. Instead of engaging in the legislative process, Defendant Mayor has overstepped his statutory authority.

Defendant Mayor's action is egregious. The Ordinance requires the City to provide off-duty police officers to private employers so long as the Off-Duty Employment Intake Manager determines that the requirements of Section 3-85(B)(2) are met. Here, Defendant Mayor has refused to even permit this required analysis, under the guise that a minuscule percentage of the officers represented by the POBA and PSOA have admitted to or been accused of illegal acts concerning off-duty employment prior to 2017. (Verified Complaint, ¶¶28-29).

This argument, however, is undercut by the fact that the Program has been staffed by off-duty officers for many years both before and after 2017. The companies accepting these services have been approved by the Off-Duty Intake Manager under the authority of the Director of Public Safety and have shown that

their off-duty assignments are not inconsistent with the efficient functioning and good reputation of the Police Department.

Requests for off-duty employment Pursuant to the Program should not have been denied. The Ordinance enacting the Program remains in effect. Private employers have the right, pursuant to that Ordinance, to hire off-duty police personnel for security. By abolishing the Program, Defendant Mayor has impermissibly repealed an Ordinance. This is outside the scope of his authority under the Faulkner Act.

Plaintiffs have a reasonable probability of success on the merits of their claims. Defendant Mayor has abdicated his statutory responsibility to enforce ordinances passed by the legislature. He has improperly usurped the power of the Defendant City's Council repealing Article XI, Section 3-85.1 of the City's Code of Ordinances. The Court must not permit the Mayor to act in this manner. Accordingly, this Court must grant interim relief.

B. PLAINTIFF'S CONSTITUENT MEMBERS WILL CONTINUE TO SUFFER IRREPARABLE HARM IF THE REQUESTED RELIEF IS NOT GRANTED.

Plaintiffs' constituent members will suffer substantial, imminent and irreparable harm if the requested relief is not granted. A plaintiff has met this element of the analysis if it can show it has no adequate remedy at law. Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). Here, Plaintiffs' members will lose the opportunity to

work and be paid for off-duty employment. (Verified Complaint, ¶¶31-32). This is harm that cannot be redressed by a remedy at law. Accordingly, Plaintiffs have met this element of the analysis and the Court must grant the requested relief.

When the City denies an off-duty employment opportunity, that opportunity is lost forever. Id. POBA and PSOA members cannot work or be paid for the job. Indeed, many of these jobs are being worked by members of the New Jersey State Police or by private, non-police personnel. (Verified Complaint, ¶28).

There is simply no adequate remedy at law for Defendant Mayor's violation of Article XI, Section 3-85.1 of the Defendant City's Code of Ordinances. Plaintiffs cannot seek money damages for the value of the lost opportunity from the Defendant City because the Defendant City simply administers the Program through the Off-Duty Employment Office. (Verified Complaint, ¶8, Exh. A). It does not pay POBA and PSOA unit members for the jobs directly, it merely passes money received from private employers to the police officers that worked the job. Id. Likewise, Plaintiff cannot recoup the funds from private employers seeking to take advantage of the benefits of the Off-Duty Employment Program because POBA and PSOA members did not work the jobs. In many instances, the private employers had to make alternate arrangements and pay either the New Jersey State Police or private security personnel for the work.

If injunctive relief is not granted, Plaintiffs' members will suffer immediate, substantial and irreparable harm. Accordingly, Plaintiffs have met this element of the analysis and the Court must grant the requested relief.

C. **THE PUBLIC INTEREST IS NOT HARMED BY GRANTING INJUNCTIVE RELIEF.**

The public interest is not harmed by granting injunctive relief. First, the public is not harmed by requiring the Defendant City to comply with its ordinances. Article XI, Section 3-85.1 was passed by the Defendant City's Council. Mayor Fulop cannot simply refuse to enforce an ordinance because he disagrees with it. Rather, the Mayor is statutorily required to enforce ordinances. N.J.S.A. 40:69A-40. The public will not be harmed if this Court requires the Mayor to exercise his statutory duties.

It is clear, however, that the public interest will be harmed if the requested relief is not granted. As a result of the Off-Duty Employment Program, one-hundred and fifty (150) additional police officers are deployed throughout the community at any given time. (Verified Complaint, ¶16). These police officers provide security for the residents of Defendant City at the expense of the private employers that hire them. Id. Thus, the taxpayers are getting the benefit of additional police officers without having to pay for them.

The use of these off-duty police officers is vitally important to the Defendant City and its residents. The public has an interest in their safety and security. The Off-Duty Employment Program provides additional safety and security to City residents. Accordingly, Plaintiffs have met this element of the analysis and the Court must provide injunctive relief.

D. THE EQUITIES FAVOR INJUNCTIVE RELIEF.

The members of the POBA and PSOA will suffer severe hardship if the requested relief is not granted. Conversely, the Defendant City will suffer no harm if Plaintiffs are afforded interim relief. Accordingly, this element weighs in favor of Plaintiffs and the Court must grant interim relief.

As set forth above, Plaintiffs' members will forever lose the opportunity to work off-duty employment and will likely never be able to recoup the money lost. The Defendant City will likely take the position that it has no obligation or responsibility to pay for services provided by off-duty officers to private employers. There is no mechanism for Plaintiffs or their members to recoup the opportunity or money lost by Defendant Mayor's improper action.

The Defendant City, on the other hand, will not suffer any hardship if interim relief is granted. The *status quo ante* will simply be maintained. The Defendant City does not have to pay for the off-duty officers working pursuant to the Program, but

residents and taxpayers reap the benefit of having more police officers deployed throughout the community.

The equities clearly favor weigh in favor of Plaintiffs. The Court must grant interim relief, direct Defendant Mayor to enforce the Ordinance and enjoin him from abolishing the Off-Duty Employment Program.

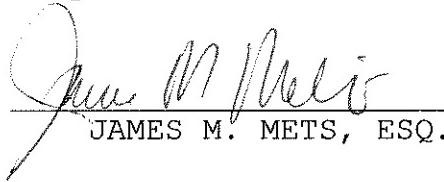
CONCLUSION

For the foregoing reasons, the Court must grant Plaintiffs' request for injunctive relief, must order Defendant Mayor to enforce Article XI, Section 3-85.1 of the City's Code of Ordinance, and enjoin the City and Mayor from violating the Off-Duty Employment Program Ordinance.

Respectfully submitted,

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